

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT TACOMA

ANTOLIN ANDREW MARKS,

Plaintiff,

v.

ALISSA Mc CLUSKEY et al.,

Defendants.

Case No. C08-5155BHS/JKA

REPORT AND  
RECOMMENDATION TO  
ALLOW PLAINTIFF TO  
DISMISS THIS ACTION  
PRIOR TO IMPOSITION  
OF A FILING FEE

**NOTED FOR:**

**April 25, 2008**

This Civil Rights/ Bivens action has been referred to the undersigned Magistrate Judge pursuant to Title 28 U.S.C. § 636(b)(1)(B). Before the court is plaintiff's motion /notice to dismiss this action (Dkt # 4). Plaintiff alleges the complaint was confiscated by officials and sent to the court and that he did not intend to file this action.

Mr. Marks declares he did not intend to file this action (Dkt # 4). Fed. R. Civ. P. 41 (a)(1) allows for dismissal by plaintiff without order of the court prior to service. That rule is appropriate to this action and the case should be **DISMISSED WITHOUT PREJUDICE**. This Report and Recommendation is prepared to make it clear the dismissal is without prejudice and to make clear that no filing fee is to be

1 collected.

2 Pursuant to 28 U.S.C. § 636(b)(1) and Rule 72(b) of the Federal Rules of Civil Procedure, the  
3 parties shall have ten (10) days from service of this Report to file written objections. *See also* Fed. R. Civ.  
4 P. 6. Failure to file objections will result in a waiver of those objections for purposes of appeal. Thomas v.  
5 Arn, 474 U.S. 140 (1985). Accommodating the time limit imposed by Rule 72(b), the clerk is directed to  
6 set the matter for consideration on **April 25, 2008**, as noted in the caption.

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9 DATED this 1 day of April, 2008.

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11 /S/ J. Kelley Arnold  
12 J. Kelley Arnold  
13 United States Magistrate Judge  
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